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Ameritech

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March 27, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, DC 20554

Re: **Ex Parte Presentation**
CC Docket 92-77

Dear Ms. Salas:

On March 26, 1998, Jim Longua and I, both of Ameritech, met with Robert Spangler, Greg Weiss, Kurt Shroeder, Thomas Wyatt, and Adrian Auger, of the Common Carrier Bureau's Enforcement Division and Calvin Howell of the Competitive Pricing Division to discuss the application of the disclosure requirements established in the Second Report and Order (Order) in the above-referenced proceeding to intraLATA interstate traffic of local exchange carriers.

In that meeting, we argued that the scope of the Order is, on its face, unclear. We noted that the term "operator service provider" (OSP) has historically referred to interexchange carriers, not local exchange carriers. We noted, in particular, that the legislative history of the Telephone Operator Consumer Services Improvement Act of 1990 (TOCSIA) specifically provides that the definition of operator services in that Act "only applies to interstate, interexchange carriers." We noted, further, the Commission itself has used the term OSP in this proceeding in contexts that could only apply to interexchange carriers, not local exchange carriers (LECs). (See, e.g. ¶ 23 of the Second Further Notice). Based on this precedent, we asked the Commission to clarify that the notification requirements in the order do not apply to the intraLATA interstate offerings of LECs.

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We argued, further, that there is no public policy reason why these requirements should apply to LECs – particularly incumbent LECs, which are regulated as dominant carriers in their provision of intraLATA toll service. We noted that the impetus behind the notification requirements was the need to protect consumers from unexpectedly high rates when they make 0+ interstate calls. It is these high rates that have been the source of numerous consumer complaints at the Commission and that drove the enactment of TOCSIA as well as the various initiatives the Commission has taken in recent years to protect users of operator services.

We noted, further, that the reason these measures have been necessary is because OSPs are treated as nondominant carriers under the Commission's rules. OSPs filing section 226 tariffs need not obtain advance approval of their operator service rates, and they need not cost-justify their rates. Indeed, as the Commission has recognized, even if they were required to cost-justify their rates, their rates might still be much higher than consumers would anticipate, insofar as their cost structures are inflated by high commission payments to aggregators. In this context, the Commission has determined that the only way to protect consumers from unpleasant surprises is to help them make informed choices.

In contrast, dominant carriers, such as Ameritech, must file tariffs pursuant to section 203 before their intraLATA interstate rates take effect. Those rates are subject to price cap regulation, and the Commission, as well as the general public, have the opportunity to scrutinize any rate changes well in advance of when they take effect.

Because the rates of dominant carriers are directly regulated - unlike the rates of traditional OSPs - there is no reason to require dominant carriers to adhere to the notification requirements of the Order. Indeed, since in describing the problem its notification requirements were intended to address, the Commission observes that customers who use LEC calling cards expect to pay LEC rates, not the higher rates of an OSP, it would be ironic if LECs themselves were forced to provide the notification required of OSPs on every interstate 0+ call. Since LECs themselves are not the source of the problem, such a result (notification requirements plus rate regulation) could hardly be reconciled with the Commission's stated desire to implement a deregulatory national framework. On the contrary, it would be a blatant case of unnecessary over-regulation.

Ameritech also explained that it cannot comply in full with the requirements established in the Order. It explained that it is obligated under section 251 of the Act to make its services, including its local toll services, available on a resale basis to other telecommunications carriers. It noted that, when intraLATA interstate dialing parity is implemented for calls originating in a particular state, Ameritech operators handling calls from that state will not know whether a particular call they are receiving originates on an Ameritech line or on the line of an Ameritech reseller. It noted, further, that, even if Ameritech could make network changes that would enable its operators to identify reseller traffic, those changes would hardly be in the public interest, since the lack of such information ensures against any possibility that an Ameritech operator could discriminate against resellers or their customers. Ameritech also noted that, even if such change were made, Ameritech's operators do not - and should not - know the retail rates and surcharges of Ameritech's competitors who resell Ameritech services.

Ameritech also explained that, to the extent the Second Report and Order requires carriers to quote surcharges or premises-imposed fees (PIFs) for which they are not themselves billing, Ameritech cannot comply because it is not privy to that information. The Order bases its surcharge and PIF disclosure requirement on the assumption that carriers already have information about surcharges and PIFs because they must include such information in their section 226 tariffs. Ameritech, and other LECs, however, do not file section 226 tariffs; they file section 203 tariffs, which do not include surcharge or PIF information. Moreover, Ameritech does not, as a general matter, offer intraLATA toll service to aggregators pursuant to contracts, much less contracts that purport to address permissible surcharges and PIFs. On the contrary, Ameritech is the default carrier for intraLATA toll interstate traffic; it provides its service under tariff, not individually negotiated contracts. Thus, in order to comply with the Commission's requirement, Ameritech would have to canvass every single aggregator in LATAs that cross state lines in order to determine what, if any, surcharges or PIFs they impose. That is obviously not practicable.

In our meeting, Commission staff suggested that Ameritech could tariff a surcharge and PIF limitation. Wholly apart from whether it would be reasonable or lawful for Ameritech to impose via tariff limits on the rates its customers charge their customers, Ameritech would certainly not be in a position to enforce any such limitation. Indeed, it is highly unlikely that aggregators that

have not negotiated any such limitation would comply with it, assuming they even knew about it. Thus, Ameritech would find itself in a position of providing false assurances to consumers about PIFs and surcharges - which is hardly consistent with Ameritech's own interests or the Commission's interest in protecting consumers.

In light of these considerations, Ameritech urged the Commission to clarify that the notification requirement in the Order does not apply to LECs, or, at least, to carriers that are regulated as dominant. In addition, to protect the resale rights of telecommunications carriers, Ameritech urged the Commission to waive the application of this requirement to resold intraLATA toll services.

Finally, Ameritech noted that it cannot currently distinguish between intraLATA interstate and intraLATA intrastate traffic for purposes of providing the required notification. It explained that, for this reason, Ameritech would have to provide any required notification on all 0+ intraLATA calls, even though only about 1% of its 0+ traffic is actually interstate. As a result, the vast majority of callers to whom this option would be made available would be intrastate callers, and in states in which intraLATA toll dialing parity has been implemented, Ameritech operators would not know which of those callers are Ameritech customers and which are the customers of Ameritech resellers.

Ameritech explained, further, that, for unrelated reasons, it is already planning to implement operator switch changes which, among other things, would permit it to differentiate between interstate and intrastate intraLATA traffic. Ameritech asked that, if the Commission does not clarify that the notification requirements do not apply to Ameritech's local toll traffic (as it absolutely should and must), it, at least, give Ameritech more time to comply with these requirements so that Ameritech need not implement them before its switch changes are implemented. Otherwise, Ameritech would have to implement the new notification requirements on obsolete equipment that is about to be replaced, and then re-implement them on the new equipment. In addition, Ameritech would have to ramp up temporarily to handle inquiries for all intraLATA traffic, and then ramp down when switch replacements enable Ameritech to limit the notification to interstate calls. The Commission, of course, also would have to waive the requirement that Ameritech provide information about surcharges and PIFs for which it is not billing. In addition, the Commission would have to permit Ameritech to ask customers to identify any reseller they might be using, so that

Ameritech does not give reseller customers information about Ameritech rates, rather than the rates of the carrier they are actually using. Finally, if the Commission does not waive this requirement as to resellers, it would have to order resellers to provide facilities-based carriers with detailed rate information so that resellers can meet their obligations under the Order.

Sincerely,

Gary L. Phillips
Director of Legal Affairs

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